

**Applicant Initiated Interview Request Form**Application No.: 10/581433First Named Applicant: Jay S. WalkerExaminer: Michael E. ButlerArt Unit: 3653Status of Application: Pending**Tentative Participants:**(1) Michael E. Butler(2) Michael D. Downs

(3) \_\_\_\_\_

(4) \_\_\_\_\_

Proposed Date of Interview: 11/23Proposed Time: 1 PM (AM/PM)**Type of Interview Requested:**(1) ☒ Telephone(2) ☐ Personal(3) ☐ Video ConferenceExhibit To Be Shown or Demonstrated: ☐ YES☒ NO

If yes, provide brief description: \_\_\_\_\_

**Issues To Be Discussed**

Issues (Rej., Obj., etc)	Claims/ Fig. #s	Prior Art	Discussed	Agreed	Not Agreed
(1) <u>Restriction</u>	<u>19-21</u>	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) <u>102 Rej.</u>	<u>1</u>	<u>Mitchell</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) <u>103 Rej.</u>	<u>7</u>	<u>Mitchell, Yamaguchi</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

☐ Continuation Sheet Attached☒ Proposed Amendment or Arguments Attached

Brief Description of Arguments to be Presented: \_\_\_\_\_

An interview was conducted on the above-identified application on \_\_\_\_\_

**NOTE:** This form should be completed and filed by applicant in advance of the interview (see MPEP § 713.01). If this form is signed by a registered practitioner not of record, the Office will accept this as an indication that he or she is authorized to conduct an interview on behalf of the principal (37 CFR 1.32(a)(3)) pursuant to 37 CFR 1.34. This is not a power of attorney to any above named practitioner. See the Instruction Sheet for this form, which is incorporated by reference. By signing this form, applicant or practitioner is certifying that he or she has read the Instruction Sheet. After the interview is conducted, applicant is advised to file a statement of the substance of this interview (37 CFR 1.133(b)) as soon as possible. This application will not be delayed from issue because of applicant's failure to submit a written record of this interview.

/Michael Downs 50252/

Applicant/Applicant's Representative Signature

Examiner/SPE Signature

Michael D. Downs

Typed/Printed Name of Applicant or Representative

50,252

Registration Number, if applicable

This collection of information is required by 37 CFR 1.133. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 24 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

**CUSTOMER NO.:** 22927

Confirmation No.: 3731

Applicants: Walker *et al.*

Application No.: 10/581,433

Filed: May 18, 2007

Title: MARKETING SYSTEM EMPLOYING VENDING MACHINES

Attorney Docket No.: 03-056

Group Art Unit: 3653

Examiner: Michael E. Butler

## **AGENDA**

**for the Telephone Interview on November 23, 2010 at 1 p.m.**

## **I. Introduction**

Claims **1-3 and 7-21** are currently pending in the present application. Claims **1, 7 and 19** are independent. Claims **19-21** are withdrawn by the Examiner. All pending claims stand rejected.

In particular:

(A) claims **19-21** are withdrawn by the Examiner as being directed allegedly to a non-elected invention (“an apparatus for vending product under distributed control of plural dispensing units”);

(B) claims **1-3** stand rejected under 35 U.S.C. §102(b) for allegedly being anticipated by U.S. Patent Application Publication No. 2002/0116262 (hereinafter “Mitchell”);

(C) claims **7-11, 13-15, 17 and 18** stand rejected under 35 U.S.C. §103(a) for allegedly being unpatentable over Mitchell in view of U.S. Patent Application Publication No. 2001/0046851 (hereinafter “Yamaguchi”);

(D) claim **12** stands rejected under 35 U.S.C. §103(a) for allegedly being unpatentable over Mitchell in view of U.S. Patent No. 6021362 (hereinafter “Maggard”);

(E) claim **12** stands rejected under 35 U.S.C. §103(a) for allegedly being unpatentable over Mitchell in view of U.S. Patent No. 6247612 (hereinafter “Kaufman”);  
and

(F) claim **16** stands rejected under 35 U.S.C. §103(a) for allegedly being unpatentable over Mitchell in view of Yamaguchi and U.S. Patent No. 6397193 (hereinafter “Walker”).

## **II. Applicants Traverse the Restriction and Withdrawal of Claims 19-21 from Examination**

Claims 19-21 were withdrawn by the Examiner as allegedly being directed to a non-elected invention independent or distinct from the invention originally claimed. Although Applicants have marked claims 19-21 as withdrawn in this paper, as required, Applicants respectfully traverse the restriction requirement as it is not supported by substantial evidence made of record.

### **A. Characterizations of Invention I and Invention II are not Clear**

The Office Action describes claims 19-21 as being drawn to “an apparatus for vending product under distributed control of plural dispensing units.” The Office Action also alleges: “Invention II has separate utility for controlling separate vending machines.” Applicants respectfully note that none of claims 19-21 appears to require “distributed control” or “plural dispensing units” or “controlling separate vending machines” on its face. Regardless, and assuming for the sake of discussion here that the Examiner is interpreting claims 19-21 correctly as being directed to such features, the functionality provided by the vending machine claim 19, for example, is substantially similar to that of method claim 1, which the Examiner alleges is directed to a different invention. No explanation is provided as to how the language of claim 19 provides the utility of “controlling vending machines” but the similar language of claim 1 does not provide such utility. Because they do not understand why all of claims 19-21 are being summarized in this manner as being drawn to “controlling vending machines” Applicants regretfully must traverse the definition of the alleged “Invention II.” As this assertion appears to be in error and is the basis for the Examiner’s finding that there are two separate or distinct inventions, and it appears to contradict the clear language of the claims, Applicants respectfully request withdrawal of the restriction requirement and examination of all of claims 1-3 and 7-21.

Applicants also respectfully note that Invention I is described as “for vending combination products contingent.” Applicants respectfully note that although some claims may provide for the vending of a combination of products, the plain language of claims 1 and 7, for example, does not require any “combination products” or vending such “combination products.” The Examiner does not explain the claim construction that

resulted in this characterization of Invention I. Because they do not understand why all of claims 1-3 and 7-18 are being summarized in this manner as being drawn to “combination products contingent,” Applicants regrettably must traverse the definition of the alleged “Invention I.” To the extent the Office Action relies on this mischaracterization of at least some of the indicated claims of “Invention I,” Applicants respectfully request reconsideration and withdrawal of the characterization of “Invention I” and reconsideration and withdrawal of the restriction of claims 19-21 from examination.

### III. The Examiner’s Rejections

#### A. 35 U.S.C. §102(b) – Mitchell

Claims 1-3 stand rejected under 35 U.S.C. §102(b) for allegedly being anticipated by Mitchell. Applicants respectfully traverse this ground for rejection for at least the reason that Mitchell does not teach or suggest *transmitting a promotional message...which...includes a code that is redeemable for a benefit at the vending machine*

Mitchell describes transmitting messages to e-mail addresses of customers. Those messages are described, in Mitchell, as including a password and a link to a rewards website. The customer in Mitchell can utilize the password to access the website and receive benefits.

A password for accessing a website, however, does not teach *a code that is redeemable at the vending machine*, as claimed. Nowhere does Mitchell describe such a concept, much less provide adequate written description thereof.

Applicants do not necessarily agree or disagree that the “password” of Mitchell suggests a *code* as recited in claim 1. But a password for accessing a website, as the “password” is described in Mitchell, does not teach a code that is redeemable at the vending machine; the Final Office Action does not provide any explanation to the contrary.

**B. 35 U.S.C. §103(a) Rejections**

Claims **7-11, 13-15, 17 and 18** stand rejected under 35 U.S.C. §103(a) for allegedly being unpatentable over Mitchell in view of Yamaguchi. Applicants traverse this ground for rejection as follows.

Claim **16** stands rejected under 35 U.S.C. §103(a) for allegedly being unpatentable over Mitchell in view of Yamaguchi and Walker.

Applicants respectfully assert that the Examiner has failed to provide evidence that Mitchell and Yamaguchi, alone or in combination, teach or suggest limitations of claims **7-11 and 13-18**. For example, the Examiner has failed to provide evidence that Mitchell and Yamaguchi teach or suggest *wherein the content of the message that promotes the vending machine comprises an indication of a code that is operable, upon being input into the vending machine, to cause the vending machine to dispense a discounted unit of a product.*

The Examiner relies on paragraph [64-68] of Yamaguchi as allegedly providing evidence of a teaching or suggestion of the above limitation. Final Office Action, pg. 5.

Yamaguchi does not describe HTML code being sent to each of a set of email addresses, the HTML code being able to cause the vending machine to dispense a unit of product.